



INTER-OFFICE MEMORANDUM LEGAL DEPARTMENT

TO: MAYOR STEPHEN J. LUECKE

FROM: CHARLES S. LEONE - CITY ATTORNEY

SUBJECT: LEGAL DEPARTMENT ANNUAL REPORT – 2009

DATE: JANUARY 21, 2010

I. OVERVIEW

In 2009 the City of South Bend Legal Department continued to provide support, advice and representation to various units of the City of South Bend and to represent the City in litigation in state and federal courts and before administrative agencies.

During 2009, the nine attorneys* of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, corporations, and authorities, including the Alcoholic Beverage Board, Human Rights Commission, Board of Zoning Appeals, Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Park Board, Century Center Board, Historic Preservation Commission, South Bend Building Corporation, Sister Cities of South Bend, Inc., South Bend Police Athletic League Corporation and South Bend Common Council.

The Legal Department provides advice and direction to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against another person or entity and litigation is the only way to achieve the goal of advancing and protecting the City's interests.

The Department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established and to provide the framework for ongoing relationships.

During 2009, Paralegal/Office Manager Stephanie Achterberg left the Legal Department staff. Mary Arndt joined the staff as Paralegal/Office Manager. Also during 2009, the support staff was

* The staff at the end of 2009 consisted of three full-time, five part-time attorneys and one attorney who voluntarily reduced her hours to 32 per week (6.3 FTE attorneys), one paralegal, one office manager/paralegal, two legal secretaries and one collection specialist.

effectively cross-trained in various positions to ensure continuity of services in the event of transition, absence or illness. The department commenced a staff-sharing arrangement with the Department of Public Works, providing .5 FTE support staff services to perform tasks associated with Board of Public Works activities.

II. HIGHLIGHTS OF 2009

As noted last year, the Department coordinated with outside counsel in the net recovery of \$4.6 M against several oil companies and oil refineries related to groundwater contamination by MTBE, a gasoline additive. In 2009, an additional \$419,297.98 was recovered, primarily from Exxon/Mobil. The MTBE litigation is now effectively concluded. The Department also managed the City's self-insurance liability claims processing and litigation defense in 2009, paying out \$421,832.41 to claimants and litigants.

The Department also saved the Department of Public Works about \$188,900.00 by handling temporary right-of-way-acquisition for the Miami Road widening project without any additional staffing costs to the Department.

During the Common Council appropriation process the department reduced its general fund budget for 2010 significantly in response to legislatively imposed reductions in property tax levies. Departmental general fund budgets are shown below:

2008	\$ 902,554.00
2009	\$ 786,974.00
2010	\$ 743,692.00

A portion of the personnel costs in the general fund budget will be reimbursed from non-general fund sources.

III. LIABILITY SELF-INSURANCE

The Department managed the City's self-insurance liability program, paying out \$421,832.41 in claims against the City in 2009. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies from year to year. The recent history of the City's liability self-insurance cost is as follows:

Year	# of New Claims Filed	# of Claims Paid	Claims Paid	Year-End Claims & Suits Pending
1998	249		\$ 411,221.79	
1999	343		\$ 446,104.48	
2000	245		\$1,102,372.60	
2001	352		\$ 648,242.73	
2002	220		\$ 341,655.19	63
2003	209	118	\$ 332,005.11	56
2004	220	125	\$ 330,949.26	60
2005	187	125	\$ 813,481.69	36
2006	169	90	\$ 401,769.01	45
2007	165	89	\$ 439,503.35	48
2008	206	74	\$ 265,438.69	43
2009	163	90	\$ 421,832.41	35

The number of new claims filed in 2009 is the lowest number in more than ten years. Significantly, pothole claims dropped from 68 in 2008 to 10 in 2009. The low number of claims demonstrates effective City-wide departmental leadership in reducing risks of operations.

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

In 2008, the statutory limit for claims against governmental entities and employees increased to \$700,000.00. In 2009, six new claims were filed against the City at this higher level.

IV. PROSECUTION OF ORDINANCE VIOLATIONS

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2009, \$98,065.00 was collected through the Legal Department for ordinance violations and other miscellaneous accounts for various departments.

The history of total collections is as follows:

1999	\$ 75,446.00
2000	\$ 78,713.17
2001	\$114,053.78
2002	\$122,226.37
2003	\$160,036.66
2004	\$161,466.00
2005	\$193,846.25
2006	\$152,268.00
2007	\$103,745.00
2008	\$117,510.00
2009	\$ 98,065.00

Under statutory provisions which became effective on July 1, 2006, the City Clerk's authority to collect fines increased from \$100.00 to \$250.00, thus significantly reducing the referrals of unpaid tickets to the Legal Department.

A breakdown of the history for the collection of ordinance violations, which include code enforcement, noise violations, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

	<u>Ordinance Violations</u>	<u>Parking Tickets</u>
2000	\$30,544.17	\$17,866.00
2001	\$70,737.27	\$15,703.00
2002	\$82,005.55	\$17,168.00
2003	\$96,008.56	\$13,736.65
2004	\$92,065.00	\$25,122.00
2005	\$91,060.23	\$21,839.00
2006	\$85,869.98	\$14,713.00
2007	\$58,878.00	\$12,973.00
2008	\$47,553.00	\$11,284.00
2009	\$36,838.00	\$ 8,651.00

V. SPECIAL TAX ASSESSMENTS

In early 2007, the Legal Department and Code Enforcement worked with the St. Joseph County Auditor and Treasurer to establish procedures and forms to certify code enforcement civil penalties and demolition costs as special tax assessments, giving those City liens priority with other taxes on real estate ahead of mortgages and other lien interests. Collections under this new procedure, managed through Code Enforcement, have been as follows:

2007	\$ 99,000.00
2008	\$190,108.00
2009	\$175,000.00 (estimated)

VI. LEGISLATIVE SERVICES

Legislative work of the department includes preparation of proposed ordinances to be submitted to the South Bend Common Council, review of proposed state legislation pending before the Indiana General Assembly, and monitoring of proposed federal legislation which could affect municipal operations.

VII. TRAINING ON LEGAL ISSUES

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to Uniformed Officers of the South Bend Police Department and to the South Bend Human Rights Commission.

VIII. LITIGATION

During 2009, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

<u>Litigation Area</u>	<u>City as Plaintiff</u>	<u>City as Defendant</u>
Animal Warrants	5	
Code Enforcement	6	6
Injunctions	6	
Foreclosures		146
Police Actions		12
Vehicles Accidents		31
Personal Injury (not vehicle)		7
EEOC Claims and Litigation		10
Worker's Compensation		2
Utility Matters	1	3
Miscellaneous		4
Total	18	221

The department continued to file significantly fewer Code Enforcement lawsuits in 2009 because of the initiation of the special assessment process to certify Code penalties and costs on property tax bills as shown below:

Code Penalty and Costs Lawsuits Filed

2006	178
2007	55
2008	3
2009	6

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in eight mediation sessions in 2009 in an attempt to resolve disputes in litigation. Department attorneys also participated in the following administrative hearings in 2009:

<u>Agency</u>	<u>Number of Hearings</u>
Human Rights Commission	12
Code Enforcement	77
License Appeals	19
Unemployment Hearings	17
Board of Zoning Appeals	6
Joint Grievance Committee Hearings	5

In 2009, the Legal Department was active in pursuing the drug and disorderly house ordinance. A total of 178 Notices to Abate under the Drug House Ordinance and 58 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. One of these notices resulted in the filing of an injunction lawsuit.

Significant litigation concluded during 2009 included settlement of a wrongful death claim and a serious injury claim. Also successfully defended was the McIntyre Jones, Inc. v. City of South Bend claim with a no liability determination, as well as two civil rights lawsuits.

IX. PUBLIC RECORDS

The Department coordinates responses to request for public records under the Indiana Access to Public Records Act. Under the Act, most initial responses are required within one business day.

Public Records Request Responses:

2008	1529
2009	1549

X. TRANSACTIONAL ASSISTANCE

During 2009, Department attorneys prepared and reviewed approximately 372 of agreements, resolutions and documents conveying real estate interests in transactions in which the City was involved, primarily for the Department of Community and Economic Development and Department of Public Works.

XI. NEGOTIATIONS

Negotiations during 2009 involving department attorneys included collective bargaining with FOP Lodge No. 36 and South Bend Firefighters Association Local No. 362, settlement negotiations and mediation to resolve pending claims and litigation, and project term negotiations to assist economic development activity.

XII. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS

During 2009, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include service on the IACT Legislative Committee; St. Joseph County Bar Association Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar

Committee of the St. Joseph County Bar Association; Indiana Municipal Lawyers Association Board; St. Joseph County Bar Foundation; Little League Board of Directors; Center for the Homeless Board of Directors, the Indiana Association of Cities and Towns and the St. Joseph County Bar Association Local Practice Seminar.